

Date: 09/18/2013

Prepared by: Technical Services Section

FISCAL ANALYSIS OF SENATE BILL 276: "COTTAGE INDUSTRIES"

Fiscal Impact:

Senate Bill 276 is estimated to **decrease** the UI Trust Fund by a net average of up to **\$5.0 million annually**¹.

Senate Bill 276 is estimated to incur a one-time IT cost of 300 hours or \$22,800, and an administrative one-time cost of 824 hours or \$34,705. The total one-time cost is **1,124 hours or \$57,505**. These one-time costs are on existing positions.

Summary of the Proposal:

This proposed law change creates a separate standard to determine independent contractor (self-employed) versus employee status for in-home workers. If an individual is determined to be an independent contractor (self-employed), the employer does not pay UI taxes on the work performed, and the individual is not eligible for UI benefits based on the wages earned. Three standards would have to be met for an individual to be considered an independent contractor (self-employed): A written agreement indicating the individual has agreed that the services are being performed as an independent contractor; The individual primarily works in the home and primarily uses own tools and equipment (primarily means 75% or more); The individual performs the services free from direction and control of the employing unit, other than initial training and quality control.

This new standard is less stringent than current law and the statutory language is broadly written, thus these individuals will be ruled as independent contractors (self-employed) and not covered at a higher rate. Currently, approximately 22% of employment status determinations rule that the individual is an independent contractor (self-employed) and not covered.

UI Trust Fund Impact Summary:

Taxes collected and benefits charged data was collected by NAICS code for years 2010-2012. The difference was then multiplied by the percentage of in-home workers in each industry, based on Census data. It is assumed that Census national data can be similarly applied to Wisconsin industries. The average percent of in-home workers across all industries is 4.3% of all workers. This data was then averaged over a 7-year recessionary and expansionary business cycle. The result shows that in an average year, the difference between benefits charged and taxes collected on all in-home workers is approximately **\$5 million**. If all in-home workers were now classified as independent contractors (self-employed), this would result in a decrease to the UI Trust Fund by a similar amount. Not all in-home workers will be ruled independent contractors (self-employed) under proposed law; however a large majority could be due current statute language of the draft bill.

One-time IT and Administrative Impact Summary:

Each business area representative: IT, Tax, Benefits, and Web/Forms were given a summary of the draft proposed law. Each determined what changes would be needed in their respected areas, and what training would be needed to implement the law. Each developed a high level estimate that was compiled into a final one-time impact of **1,124 hours or \$57,505**.

Special Notes: **If an individual qualifies as an independent contractor for UI purposes based on Wisconsin law, but does not meet the common law Federal standard of independent contractors as defined by the IRS, the employer could have to pay FUTA payroll tax and would be penalized by not being entitled to any FUTA credit, which employers who pay taxes on time are usually entitled to and workers would still not be entitled to UI benefits.*

**Since this law proposal may negatively impact UI Trust Fund solvency, it could lead to accelerated FUTA credit reductions if this law were to pass while Wisconsin is borrowing from the Federal government (though this is not the current projection).*

¹ While this estimate is based on current work at home patterns, trends show a desire to cut business costs, and this proposed law may give employers incentive to have individuals work from home and to classify these individuals as independent contractors, leading to an even greater reduction to the UI Trust Fund in future years.